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PATENT
Attorney Docket No. 10618.0004

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
Alain Rambach *et al.*) Group Art Unit: 1657
Application No.: 10/528,824) Examiner: Herbert J. Lilling
Filed: March 23, 2005) Confirmation No.: 6976
For: METHOD OF DETECTING)
METHICILLIN-RESISTANT)
MICROORGANISMS (as amended))

MAIL STOP AMENDMENT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

INFORMATION DISCLOSURE STATEMENT UNDER 37 C.F.R. § 1.97(c)

Pursuant to 37 C.F.R. §§ 1.56 and 1.97(c), Applicants bring to the attention of the Examiner the documents listed on the attached IDS Form PTO/SB/08. This Information Disclosure Statement is being filed after the events recited in Section 1.97(b) but, to the undersigned's knowledge, before the mailing date of either a final action, Quayle action, or a Notice of Allowance. Under the provisions of 37 C.F.R. § 1.97(c), this Information Disclosure Statement includes a statement as specified by Section 1.97(e).

The following constitutes the statement specified by Section 1.704(d) required to avoid a negative patent term adjustment. Each item of information contained in this Information Disclosure Statement was first cited in a communication from the European Patent Office in a counterpart application, and this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of this Information

Disclosure Statement. In accordance with 37 C.F.R. § 1.704(d), no negative patent term adjustment will result from this Information Disclosure Statement.

Copies of the listed foreign and non-patent literature documents are attached. English translations of the non-English documents are enclosed. Specifically, Applicants enclose a translation of sheets 1-5 of the Minutes of the Hearing before the Opposition Division of the European Patent Office, and a translation of sheets 1-11 of the Decision of the Opposition Division affirming the patentability of claims 1-9 of the Main Request submitted during the opposition. Applicants provided the Office with an English translation of those claims with the Interview Summary Under 37 C.F.R. § 1.133(b) filed February 6, 2009.

Briefly, the Opposition Division determined that “D12,” which is J. Kluytmans et al., “Performance of CHROMagar Selective Medium and Oxacillin Resistance Screening Agar Base for Identifying *Staphylococcus aureus* and Detecting Methicillin Resistance,” J. Clin. Microbiol., 40 (7):2480-82 (July 2002), was the closest prior art to the claimed invention.¹ Translation of Decision, sheet 6. Applying an inventive step analysis, the Opposition Division “defined the technical objective problem as the improvement of sensitivity of D12 while retaining its high specificity.” The Patent Proprietor’s solution to that problem, according to the Opposition Division, was “the use of cephalosporins of 2nd and 3rd generation selected from the group consisting of cefoxitin, cefmetazole, moxalactam and flomoxef, instead of oxacillin, in the claimed medium.” *Id.*, sheet 8. Contrary to the assertions of the two opponents, the Opposition Division “conclude[d] that there is no lack of inventive activity/step” for the claims of the Main Request over the references cited by the opponents. *Id.*, sheet 9. Applicants invite the Office to consider the reasoning of the

¹ Kluytmans was submitted to the Office in an IDS filed May 4, 2005.

Opposition Division in this regard, which is set forth in detail on sheets 5-13 of the translation.

Applicants respectfully request that the Examiner consider the listed documents and indicate that they were considered by making appropriate notations on the attached IDS Form PTO/SB/08.

This submission does not represent that a search has been made or that no better art exists and does not constitute an admission that each or all of the listed documents are material or constitute "prior art." If the Examiner applies any of the documents as prior art against any claims in the application and Applicants determine that the cited documents do not constitute "prior art" under United States law, Applicants reserve the right to present to the office the relevant facts and law regarding the appropriate status of such documents.

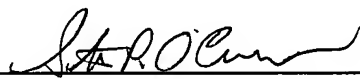
Applicants further reserve the right to take appropriate action to establish the patentability of the disclosed invention over the listed documents, should one or more of the documents be applied against the claims of the present application.

If there is any fee due in connection with the filing of this Statement, please charge the fee to Deposit Account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: March 25, 2009

By: 
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571-203-2718